Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04-208

COMMENTS OF VERIZON TO THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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Introduction and Summary

The Commission should not adopt additional rules because market forces and an existing federal regulatory framework already serve to ensure that consumers are provided accurate, truthful and non-misleading bills. Rules that dictate the content or format of carriers' bills would raise serious First Amendment issues. In addition, the Commission's proposed rules would restrict carriers' ability to compete based on their bills and impose undue costs on wireline carriers. The Commission should, however, preempt state billing regulations to ensure that the federal framework it has established is not negated by inconsistent state requirements or interpretations.

[1] The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

Additional regulation is not needed because bill clarity and format are competitive issues, and carriers have a strong incentive to provide clear and accurate bills. Moreover, the Commission has already established based on the *Truth-in-Billing Order*[2] and the *Second TIB Order*[3] a federal regime that prohibits the use of non-truthful and misleading bills. The Commission thus already has a framework in place to protect consumers and to take targeted enforcement action against those carriers that fail to comply. There is therefore no need for the Commission to enact further rules when doing so will impede the ability of carriers to compete for customers and fail to advance the Commission's interests while imposing significant burdens on wireline carriers. In addition, the Commission's proposed rules requiring separation of charges by categories, standardized labels and point of sale disclosures would violate the First Amendment because they both restrict and compel speech. The Commission should instead preempt state billing regulations in order to ensure that the national framework it has established to provide protection to consumers while enabling carriers enough flexibility to compete on the basis of their billing formats is not frustrated.

I. The Current Regulations Already Establish A Federal Framework That Ensures Truthful Billing Practices And Enforcement.

In 1999, the Commission adopted the *Truth-in-Billing Order* to ensure "that consumers receive thorough, accurate, and understandable bills from their

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[2] *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492 (1999) ("*Truth-in-Billing Order*").

[3] *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, 20 FCC Rcd 6448 (2005) ("*Second TIB Order*" or "*FNPRM*").

telecommunications carriers." *Truth-in-Billing Order* ¶ 5. The *Truth-in-Billing Order* sets forth three principles that require that bills 1) be clearly organized, clearly identify the service provider and highlight any new providers; 2) contain full and non-misleading descriptions of the charges that appear therein; and 3) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. *Id.* ¶ 5. In the *Second TIB Order*, the Commission extended these principles to wireless carriers, reiterated that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or required by the government and clarified that the burden rests upon the carrier to demonstrate that recovery of any specific governmental or regulatory fee conforms to the amount authorized to be collected. *Second TIB Order* ¶¶ 27-29.

Although the Commission declined to adopt rigid rules, the Commission "caution[ed] that we will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges." *Truth-in-Billing Order* ¶ 58. The Commission thus already has in place a federal regime with which carriers must comply. The Commission also has the authority to enforce those rules by taking individual actions against carriers who have been found to be in violation of the rules.

II. Market Forces Also Ensure That Carriers Are Responsive To Customers' Billing Concerns And Additional Regulation Would Constrain Carriers' Ability To Compete.

No additional regulation is required because the competitive market will also ensure that carriers will provide clear and truthful bills to meet their customers' demands. In establishing the federal framework, the Commission recognized that "there are many ways to convey important information to consumers in a clear and accurate manner" and therefore determined to set "broad, binding principles to promote truth-in-billing rather than mandate detailed rules that would rigidly govern the details or format of carrier billing practices." *Truth-in-Billing Order* ¶¶ 9, 10. In doing so, the Commission saw the importance of providing carriers with flexibility so that they could satisfy their obligations "in widely divergent manners that best fit their own specific needs and those of their customers." (*Id.* ¶ 9). Carriers could thus differentiate themselves based on the content, format and clarity of their bills. (*Id.* ¶ 10).

The reasoning behind adopting broad principles, rather than detailed rules, is no less applicable today. Indeed, since 1999, competition has become even more intense for customers as convergence has brought new intermodal competitors that offer attractive bundles of local, long-distance, wireless and data services. Cable, wireless, Voice over Internet Protocol ("VoIP"), e-mail and instant messaging are all being used as replacements for traditional wireline services. Switched cable telephony and cable VoIP offerings compete directly with wireline voice service. In addition, wireless services have become a replacement for traditional landline long distance service and a growing number of consumers are abandoning traditional wireline companies altogether and using wireless technology instead.[4]

As a result, carriers seek to differentiate themselves even more through initiatives like customer-friendly bills and responsive customer service. Verizon, for example, has devoted significant resources to retain billing consultants, conduct focus groups and bill usability studies and reformat its billing systems in order to provide more understandable, customer-friendly bills. Based on a bill redesign study concluded last year, Verizon currently separates taxes and fees from charges for services ordered on its standard bill format. This section includes both taxes and fees that are required to be collected from the customer and remitted to the governmental entity and those that are only imposed on Verizon but permitted to be recovered from the customer. The bill also includes explanations of some of the surcharges and information on how to obtain more information about the various charges. In designing the bill in its current format, Verizon's goal was to make the bill very understandable to customers and thus provide true customer service. Verizon also provides its customers with a choice of other bill formats should they so choose, including paper bills, on-line statements, summary bills and other formats. In addition to attracting and retaining customers by being responsive to their needs, clear, accurate and understandable bills reduce Verizon's costs of handling customers who may call with billing questions or complaints.

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[4] *See generally*, *Verizon and MCI Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Attachment 6, Declaration of Michael K. Hassett, et al., at ¶¶ 12- 19 (filed Mar. 11, 2005) (describing facilities-based competition in the mass market by intermodal carriers).

Verizon's efforts to make bills more responsive to customer needs have paid dividends and set it apart from its competitors. Based on Verizon's tracking of total customer complaints, only 0.85% of the complaints recorded in 2004 related to taxes and surcharges. To date in 2005, only 0.67% of the complaints tracked related in any way to taxes and surcharges. The number of customers who complained because they believed the taxes and surcharges were not clearly described is not separately tracked, but are a subset of these complaints and consequently would be even smaller. There is therefore *no* valid reason for the Commission to adopt its proposed further rules.

Despite the fact that market forces, buttressed by the Commission's prohibitions against non-truthful and misleading bills, are working to ensure that carriers' bills are accurate and clear, the Commission has proposed to adopt additional rules that 1) require a separation by government-mandated versus non-mandated charges and perhaps by even further categories; 2) require standardized labeling of certain categories and federal regulatory charges; and 3) require a point of sale disclosure. These regulations, however, will only limit competition and consumer choice.

First, additional regulations limit the ability of carriers to respond to customer preferences. The Commission should allow carriers the flexibility to design billing formats that are best suited to their customer needs and as a basis for differentiating themselves from other carriers. As set forth above, bill presentation and clarity is one way Verizon and other carriers have to attract and retain customers. Customer responsiveness, whether it is alerting customers at the point of sale that additional taxes and fees may apply, providing clear description of charges in their bills, or providing alternative format bills that best suit their needs, is a tool that carriers must have in order to differentiate themselves from other carriers. The Commission must not constrain carriers' ability to compete in this manner, nor put these carriers at a competitive disadvantage with respect to new entrants to the market who are not subject to any such regulations at all.

Second, the Commission is not an expert in bill format and design and there is no reason to believe that changes proposed by the Commission will make bills any clearer. The regulations proposed will effectively negate Verizon's studies and efforts in redesigning its bills and will likely create more, not less, confusion for the consumer. For instance, separation by "mandated" charges is likely to create more confusion since that term can have many meanings depending on how the word is used.[5] Similarly, requiring standardized labeling for certain categories and regulatory fees, but not for all, would still leave carriers free to label other categories and charges in different manners. Consumers would still have different descriptions of charges and bill formats from different carriers, much as they do today. And because the calculation of taxes and fees is an extremely complicated process, as described in more detail below, a point of sale disclosure requirement would likely lead to increased consumer confusion about what charges will actually appear on their bill. Given the Telecommunications Act's directive to deregulate in

[5] *See FNPRM* ¶ 39 (seeking comment on how the term "mandated" should be defined).

the interest of competition[6] and the legal infirmity of some of the Commission's proposed actions, as also explained below, the Commission should not impose more regulation on carriers.

III. The Proposed Point of Sale Disclosure Requirement And Other Changes Would Be Unduly Burdensome And Costly To Wireline Carriers.

The Commission should not adopt the proposed point of sale disclosure and other requirements because it would be extremely onerous and costly for Verizon and other wireline carriers. In the FNPRM, the Commission tentatively concluded that carriers must disclose the "full rate," including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale. The Commission also tentatively concluded that providing only a range of potential surcharges could be misleading. *FNPRM* ¶ 55, 56. Because wireline carriers are subject to numerous fees and taxes applicable to a broad range of products and services, a calculation of these charges at the point of sale would be extremely impractical to accomplish. In addition, it would impose millions of dollars on Verizon for training, increased transaction costs and system upgrades that are neither warranted nor justified.

The point of sale disclosure requirement suggested by the Commission is extremely impractical and unworkable. There are literally thousands of taxing

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[6] Congress made clear in the provisions of the Telecommunications Act of 1996 that less regulation was the desired goal as competition increases, rather than the adoption of more regulation. Section 10, for example, requires the Commission to consider the competitive effect of forbearance, and Section 11 requires the Commission to review biennially whether any regulation is no longer necessary as a result of meaningful economic competition.

jurisdictions, and taxes and surcharges vary widely with the type of service and customer, even within a specific location. For example, a state may have a minimum/maximum tax where it charges 0.2% on the first $25 of intrastate revenues. If the customer already has $25 worth of services, then the tax would not apply to any new purchase. If the customer has only $23 dollars worth of existing services, then the 0.2% tax would only apply to $2 of the new purchase. If the customer later drops services, then anything quoted at the time of that purchase would no longer be accurate. Another example is a tax that applies to other taxes or fees that are considered revenue to the carrier. A Federal Universal Service Fund charge, for example, is considered revenue and subject to such taxes. This means that one must know exactly which fees are considered to be revenue and whether that revenue is subject to which applicable tax in order to provide an accurate tax quotation on a purchase. A third way taxes and fees may vary is by the type of customer. In the case of a Lifeline customer, for instance, some taxes and fees will apply and some will not, depending on federal, state or local rules and assuming that the customer is willing to reveal enough personal information to determine whether he is a Lifeline customer in the first place. Even with the most rigorous of training provided to customer service representatives, estimates[7] of the actual taxes

[7] Because fees and surcharges will vary depending on the mix of products, localized taxes and fees and individual circumstances of the customer, even determining *which* fees and taxes may apply to a sales transaction is highly complex. For this reason, the Commission's proposal to require that all taxes and fees be disclosed at the point of sale would be difficult to comply with even if the Commission only required estimates.

and fees that would apply to a purchase would be so fraught with inaccuracies that they would likely be more misleading than not.

To alert customers about taxes and surcharges, Verizon sales consultants are trained to inform customers that their monthly service charges are subject to additional applicable taxes and fees. In fact, this disclosure statement is required to be made and is considered when the consultant's job performance is evaluated. It provides notice to the customer that there may be additional taxes and surcharges so that customers are aware that their bills will be higher than the advertised price. As discussed above, Verizon's efforts to provide excellent customer service in this manner have resulted in miniscule numbers of overall customer complaints concerning taxes and surcharges. The number of complaints regarding inadequate point of sale disclosure, which would comprise only a part of the small number of the overall complaints, simply cannot justify a mandatory point of sale disclosure requirement.

Not only is it not effective, it would also be extremely burdensome for Verizon to comply with the Commission's proposed regulation. Verizon has multiple service order entry systems throughout its footprint and none of those systems can provide the type of disclosure proposed by the Commission. In order to provide a "full rate," including all taxes and surcharges, to the customer before a customer signs a contract for service, Verizon's sales consultants would have to determine which taxes and surcharges apply by consulting manuals and then manually calculate those charges with a calculator.[8] The cost to train all sales consultants to do so would be enormous. In addition, this requirement would result in significantly increased cost to Verizon in handling time for order processing. For example, in 2004, call center representatives processed approximately 23 million new or change orders for consumers alone. Verizon has calculated that it costs approximately $0.94 for each minute of time these representatives spend assisting consumer customers. Therefore, if the point of sales disclosure adds only one additional minute to the sales order call, this requirement would have cost Verizon over $21.6 million in 2004 in the call centers for consumer orders alone. Due to the complexity of calculating taxes and fees and informing customers of each fee, this requirement would undoubtedly add more than a minute to each call. These burdens are not warranted for the infinitesimally small number of complaints associated with taxes and surcharges experienced by Verizon and would be arbitrary, capricious and punitive.[9]

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[8] Although Verizon's billing systems calculate all such taxes and fees, they are different and separate systems that operate using different protocols. They therefore cannot simply be linked to order entry systems to generate actual applicable taxes and fees on a real-time basis.

[9] In addition, the Commission should not assume that because three wireless have agreed to make certain point of sale disclosures with 33 State Attorneys General, this requirement would not be a burden for wireline carriers. *See Assurance of Voluntary Compliance.* The billing system requirements of wireline carriers cannot be compared to wireless carriers. Calculations for wireless carriers are considerably less complex as they sell a far smaller number of services than wireline carriers. For example, wireless carriers typically sell service based on a specific bundle of minutes or calling plan that covers the entire country at a uniform price. While customers of wireline customers may also be able to buy service based on a specific bundle of minutes or calling plan that covers the entire country at a uniform price, customers of wireline carriers also can purchase a variety of other combinations of

The Commission's other proposed regulations can also be costly to implement. As noted above, Verizon has an economic incentive to ensure that its bills are clear and accurate. Requiring a further separation of the bills by mandated and non-mandated or other categories could be extremely costly to implement. Verizon has estimated that if these requirements add another page to Verizon's monthly bills, it would result in over $34 million a year just in increased postage costs. Verizon recently devoted substantial resources and expense to redesign its billing system as part of a multi-year billing study that sought to make the bills more customer-friendly due to *competitive*, not regulatory, pressures. It would be extremely burdensome for Verizon to have to modify its systems once again to comply with regulatory prescriptions that will do little to advance the Commission's goals.

IV. The Commission's Proposed Regulations Would Violate the First Amendment.

Not only are they unnecessary, the Commission's proposal to require carriers to separate government mandated charges from other charges, to use standardized labels and to provide point of sale disclosures would violate the First Amendment. Each of these proposals would both restrict and compel speech by carriers by dictating that specific words (and no others) be used in labeling line item charges and categories and that carriers must make certain disclosures prior to the

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services, including local, long distance, flat rate, dial tone, voicemail or packages containing these services. The prices, taxes and fees that may apply to those combinations vary widely.

purchase of services. These proposals, however, would infringe on carriers' ability to engage in protected speech concerning the nature of line item charges. They would also fail to meet the intermediate scrutiny afforded commercial speech.

It is well settled that corporations, like individuals, have a constitutionally protected right to engage in speech. As the Supreme Court has stated, "Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster."[10] The First Amendment fundamentally guarantees the freedom to discuss "publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."[11] And just as the government may not restrict truthful speech, neither may it compel speech.[12] Compulsory speech is as antithetical to the First Amendment as restricted speech, and the burden is on the government to show both a compelling state interest and that the restrictions are "closely drawn to avoid unnecessary abridgement."[13]

The Commission's proposed rules, however, cannot meet this exacting standard. The proposed requirement to separate charges based on a government-defined term of "mandate" and the proposal for standardized labels are a direct restriction on carriers' ability to engage in speech of their choice. The Commission's

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[10] *Pacific Gas & Elec. Co.*, 475 U.S. at 8 (internal citations omitted).

[11] *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 776 (1978) (internal citations omitted).

[12] *See, e.g., Turner Broad. Sys. v. FCC,* 512 U.S. 622, 641 (U.S. 1991) ("Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right.")

[13] *Bellotti,* 435 U.S. at 786 (internal citations omitted).

proposal to require point of sale disclosures, on the hand, would compel carriers to speak. Thus, they impose burdens on carriers' ability to freely communicate with their customers. Moreover, the Commission has not demonstrated that there exists a compelling interest to impose these restrictions because the Commission has not shown that carriers' bills are in fact misleading. Indeed, Verizon's information shows that customers are satisfied with the disclosures in their bills and at the point of sale. Finally, these restrictions are not closely drawn to avoid unnecessary abridgment. To the contrary, as set forth above, the restrictions would not advance the government's interest in ensuring that customers receive clearer bills and may even lead to more confusion.

The restrictions placed on speech are particularly suspect when they affect speech regarding matters of public concern. When carriers set charges out as line items, the labels they use convey important information, including the type of charge it is, the programs and activities that the charge is meant to fund, and the source of the charge. As former Commissioner Furchtgott-Roth explained in connection with the *Truth-in-Billing Order*, "Line items for new taxes are a means of letting customers understand why rates are not lower than they would have been absent the new taxes."[14] They not only inform customers of the reason why their bills are higher, but also enable accountability for government action. This is precisely "the kind of discussion of matters of public concern that the First

[14] *Truth-in-Billing Order*, Dissenting Statement of Commissioner Furchtgott-Roth.

Amendment both fully protects and implicitly encourages."[15] In addition, customers have a right to receive information and a restriction on carriers' ability to provide this information would violate customers' First Amendment rights as well.[16] Because prohibitions against the free discussion of governmental affairs can rarely survive this "exacting scrutiny necessitated by a state-imposed restriction of freedom of speech,"[17] the Supreme Court has invalidated numerous prohibitions aimed at restricting the ability of corporations to engage in speech of this nature.[18]

Even if it were not subject to the strict scrutiny standard above, the Commission's proposed regulations would similarly fail to pass the intermediate scrutiny for restrictions on commercial speech articulated by the Supreme Court in *Central Hudson*:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances

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[15] *Pacific Gas & Elec. Co. v. California*, 475 U.S. 1, 8 (1986) (internal quotations and citations omitted).

[16] *See Virginia Sate Board of Pharmacy*, 425 U.S. at 765 (explaining the First Amendment right to receive information and ideas).

[17] *Bellotti,* 435 U.S. at 786 .

[18] *See, e.g., Consolidated Edison Co. v. Public Service Comm'n of New York*, 447 U.S. 530, 534 (1980) (invalidating a state order prohibiting a privately owned utility company from discussing controversial political issues in its billing envelopes); *Bellotti*, 435 U.S. at 795 (invalidating state prohibition aimed at speech by corporations that sought to influence the outcome of a state referendum); *Pacific Gas & Elec.*, 475 U.S. at 20-21 (vacating Commission's order that a gas and electric utility be required to apportion space in its billing envelopes for inserts of an opposing public consumer group).

> the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[19]

The party seeking to impose a restriction on commercial speech has the burden of justifying it, and this burden may "not be satisfied by mere speculation or conjecture."[20]

Therefore, so long as carriers' protected commercial speech is not misleading, the Commission cannot impose the additional regulations unless it can demonstrate that it has a substantial governmental interest. Although the Commission has suggested that its proposed rules are necessary to ensure that bills are not misleading, the Commission has already prohibited bills that are non-truthful and misleading. Additionally, Verizon's data shows that there are very few complaints related to taxes and surcharges. There is therefore no substantial governmental interest in regulating the exact words contained in carriers bills or bill formats themselves.

The proposed regulations would also fail to meet the third prong under *Central Hudson* that the regulation directly advances the governmental interest asserted. The regulation "may not be sustained if it provides only ineffective or remote support for the government's purpose."[21] Moreover, "this burden is not

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[19] *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980).

[20] *Edenfield v. Fane,* 507 U.S. 761, 770 (1993); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648 (1985) (requiring evidence or authority, not unsupported assertions, that the potential abuses associated with the use of illustrations in attorneys' advertising cannot be combated by any means short of a blanket ban).

[21] *Edenfield*, 507 U.S. at 770.

satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."[22] As stated above, there is no factual record for the conclusion that carriers' bills are misleading to consumers or that the Commission's proposal for separate categories, standardized labels and point of sale disclosures (whatever they may be) will materially alleviate any confusion that may exist.

Finally, the Commission's proposed regulations would also fail the fourth prong of the *Central Hudson* test that regulations be no more extensive than necessary. Restrictions on speech must be "narrowly drawn" and will not be upheld "when narrower restrictions on expression would serve its interests as well."[23] The *Truth-In-Billing Order* already requires carriers to provide truthful and nonmisleading information in their bills. In addition, the Commission also has the ability to take individual enforcement action to address truly deceptive practices. Therefore, more intrusive regulation that dictates what must be disclosed, how they must be disclosed and which words must be used cannot meet this test.

V. The Commission Should Preempt State Rules Governing Truth-in-Billing Matters.

[22] *Id.* at 770-71. *See also Ibanez v. Fla. Dep't of Bus. & Professional Regulation*, 512 U.S. 136, 146 (1994)("If the protections afforded commercial speech are to retain their force, we cannot allow rote invocation of the words 'potentially misleading' to supplant the Board's burden to 'demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.'" (citing *Edenfield*, 507 U.S. at 771)(internal quotations and citations omitted).

[23] *Central Hudson*, 447 U.S. at 565.

Because of the nationwide scope of telecommunication services today, and the bundling of interstate services on single bills, the Commission should adopt its tentative conclusion that it should preempt state regulations governing truth-in-billing practices. *FNPRM* ¶¶ 50-52. Preemption is necessary to ensure that the federal framework the Commission has established to protect consumers while allowing carriers to compete based on differentiation of their bills is not frustrated and that further development and competition are not stifled by inconsistent state rules and interpretations.

Numerous states have enacted or are considering enacting regulation to govern billing practices of all telecommunications carriers.[24] Many of these regulations conflict with the Commission's Truth-in-Billing requirements and are often at odds even with one another.[25] At a minimum, they pose the potential for creating fifty differing truth-in-billing schemes with which carriers must comply. As telecommunications services are provided increasingly on a nationwide basis and customer bills combine interstate and other bundled services, compliance with the myriad state regulations becomes more burdensome for carriers and adds unnecessary cost for consumers. The Commission has correctly concluded that limiting state regulation of billing practices "in favor of a uniform, nationwide, federal regime, will eliminate the inconsistent state regulation that is spreading

[24] *See FNPRM* ¶ 49 and n.148.

[25] For example, the Vermont Public Service Board has proposed to prohibit carriers from itemizing a separate charge to recover the Vermont gross receipts tax imposed on carriers (*see* Public Service Board Proposed Rule 7.167(c)), whereas Colorado requires a certain rate element to be placed as a line item (4 Colo. Code Regs. § 723-41-2.3).

across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers." *FNPRM* ¶ 52.

The Commission may preempt state regulation when it is necessary to protect a valid federal regulatory objective and where state regulation would "negate[] the exercise by the Commission of its own lawful authority."[26] Federal law preempts state law where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fidelity Federal Savings and Loan Asn v. De La Cuesta,* 458 U.S. 141, 153 (1982) (internal quotations and citations omitted). Federal regulations can have the same preemptive effect as a federal statute and where Congress has directed an agency to regulate, an agency decision to preempt state regulation is subject to judicial review only to determine whether it has exceeded its statutory authority or acted arbitrarily. *See City of New York v. FCC*, 486 U.S. 57, 64 (1988); *United States v. Shimer*, 367 U.S. 374, 381-82 (1961). In this regard, where a federal agency has chosen to pursue regulation with a light hand, or to refrain from regulation at all,

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[26] *Pub. Serv. Comm'n of Maryland v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990) (*citing National Ass'n of Regulatory Util. Comm'rs v. FCC*, 880 F.2d 422, 429-31 (D.C. Cir. 1989); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 113 (D.C. Cir. 1989); *Public Util. Comm'n of Texas v. FCC*, 886 F.2d 1325, 1331-33 (D.C. Cir. 1989); *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198, 215 (D.C. Cir. 1982)(finding that the Commission had authority to preempt state tariffing requirements for customer premises equipment charges to promote the federal goal of promoting the efficient utilization and full exploitation of the interstate telecommunications network); *People of State of Calif. v. FCC*, 567 F.2d 84, 86-87 (D.C. Cir. 1977).

the imposition of additional burdensome or inconsistent state rules is in direct conflict with the achievement of those goals.[27]

As explained above, the Commission, in the *Truth-in-Billing Order* has carefully considered the interests of consumers in receiving truthful, accurate and non-misleading bills. Verizon is fully committed to complying with the letter and spirit of that Order. And, as a practical matter, carriers who do not distinguish themselves on superior service and customer value will not survive in the competitive marketplace. The Commission, however, also concluded that carriers have a legitimate competitive need to be able to determine the format and content of their bills in a way that best meets their own and their customers' needs. The Commission thus determined that broad principles, rather than more prescriptive rules, would best serve these two complementary goals. States should not be permitted to upset this balance by imposing more and different regulations.

Moreover, this federal regime may be compromised even with state regulation that is facially consistent with the Commission's orders because the regulations may be subject to differing interpretations and enforcement by the states. Consequently, the Commission should preempt state regulation of billing practices regardless of whether they are facially consistent with the federal

[27] In *Vonage Holdings Co. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Comm'n*, 19 FCC Rcd 22404, ¶¶ 20-22 (2004), the Commission preempted traditional state telephone company regulation precisely because the state regulations conflicted with the Commission's "pro-competitive deregulatory rules and policies governing entry regulations, tariffing, and other requirements arising from these regulations for services such as DigitalVoice."

framework.[28] Any additional state regulation where the Commission has expressly determined would not best be served by regulation would negate the Commission's objectives. States, of course, will continue to enforce their own generally applicable contractual and consumer protection laws to the extent they do not conflict with the Commission's truth-in-billing rules. Although states should not be permitted to enforce rules developed by the Commission, states may continue to fulfill their consumer protection role by fielding and investigating complaints that arise within their jurisdiction and referring them to the Commission for enforcement.

[28] For these reasons, the Commission should also eliminate 47 C.F.R. § 64.2400(c), that permits the adoption of consistent truth in billing requirements by the states.

Conclusion

For the reasons stated above, the Commission should not impose additional truth-in-billing rules on carriers. In addition, the Commission should preempt state regulation and repeal section 64.2400(c), which authorizes states to enact and enforce more specific truth-in-billing rules.

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local and long distance exchange carriers affiliated with Verizon Communications Inc. These are:

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance
Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
NYNEX Long Distance, Inc. d/b/a Verizon Enterprise Solutions
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon Select Services Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.